

Reimbursable Repairs from the Reimbursement Fund, if eligible, pursuant to Section 4.2, 4.3 or 4.4.

5. **REIMBURSEMENT FUND**

On or before thirty (30) days after preliminary approval by the Court of the Settlement, Defendants will deposit the sum of eight million (\$8,000,000) dollars into an interest-bearing bank account under the joint control of Defendants' Counsel and Plaintiffs' Counsel, subject to Court approval and direction, to cover Reimbursement Payments required to be made pursuant to this Settlement Agreement. In the event that the Reimbursement Fund plus accrued interest thereon is not sufficient to pay all eligible Reimbursement Claims, the Reimbursement Payments will be made on a pro rata basis. The Reimbursement Fund shall constitute Defendants' sole and entire obligation and liability with respect to Reimbursement Payments and/or Reimbursable Repairs.

6. **DISPOSITION OF RESIDUAL REIMBURSEMENT FUND**

Moneys remaining in the Reimbursement Fund after payment of all eligible Reimbursable Repair claims pursuant to Articles 4.2, 4.3 and 4.4 shall be expended as follows:

6.1 Such moneys shall be placed in an interest bearing account under the control of defendant Volkswagen Group of America, Inc., for a period of five (5) years after the Effective Date and shall be utilized to fund or reimburse, as applicable, VWGoA payments for repairs beyond warranty made on a case-by-case basis to Settlement Class Members or to authorized Audi or Volkswagen dealers for

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1 the benefit of Settlement Class Members pursuant to applicable VWGoA Customer
 2 Care procedures with respect to water entry into the passenger compartment of
 3 Settlement Class Vehicles through or due to the sunroof drain system or plenum
 4 area (including through the pollen filter area), which payments are made by on or
 5 after the date on which Notice is mailed by the Settlement Administrator. Plaintiffs'
 6 counsel shall be provided with current statements of account, including accrued
 7 interest, and shall be informed of the claims and amounts being paid from such
 8 funds on an annual basis on the date of the anniversary of the Effective Date.

9 6.2 Any moneys, including accrued interest, remaining in the Reimbursement
 10 Fund after five years after the Effective Date shall be donated to an educational,
 11 charitable, and/or research facility in the United States and dedicated to specific
 12 projects and programs benefitting automobile safety and/or environmental
 13 technology (e.g., alternative fuels, electric vehicle technology, including battery
 14 technology, renewable resource utilization, etc.), which recipients and programs
 15 shall be approved by plaintiffs' counsel and the Court.

16 6.3 Upon the disbursement of all moneys in the Reimbursement Fund, the
 17 Reimbursement Fund shall be closed.

18 **7. REIMBURSEMENT PAYMENTS**

19 7.1 Payments from the Reimbursement Fund will be administered by the
 20 Settlement Administrator at Defendants' expense and shall be applied solely and
 21 exclusively for Reimbursement Payments to Settlement Class Members who submit
 22 qualifying claims for Reimbursable Repairs. To the extent practicable,
 23 Reimbursement Payments shall be distributed within sixty (60) days after the
 24 Effective Date. No portion of the Reimbursement Fund shall be used to pay costs

1 or expenses of settlement administration, or attorneys' fees and costs, or any other
 2 cost, expenditure or debt other than Reimbursement Payments to Settlement Class
 3 Members.

4 7.2 Documented unreimbursed expenses paid out-of-pocket for
 5 Reimbursable Repairs in qualifying Settlement Class Vehicles sustained prior to the
 6 date on which Notice is mailed to the Settlement Class will be reimbursed from the
 7 available Reimbursement Fund, if a fully completed Claim Form, including Proof of
 8 Repair, is submitted within seventy-five (75) days after the date on which Notice is
 9 mailed to the Settlement Class (subject to 1.4 and 7.4).

10 7.3 Documentation required with each Reimbursable Repair claim made shall
 11 include, as part of the Claim Form, the following:

- 12 (a) Name and mailing address of the claimant;
- 13 (b) Identification of the Settlement Class Vehicle concerning which a
 14 Reimbursable Repair claim is being made, including the Vehicle
 15 Identification Number (VIN), if available;
- 16 (c) Identification of the owner, purchaser or lessee of the Settlement Class
 17 Vehicle at the time that the claimed Reimbursable Repair expenses were
 18 incurred;
- 19 (d) Proof of Repair, as specified in Section 1.21; and
- 20 (e) Attestation: "Under penalties of perjury as provided in United States
 21 Code Title 18, section 1623, and any applicable state perjury statute, the
 22 information provided is true, accurate and correct."

23 7.4 To qualify for a Reimbursement Payment, a completed Claim Form and
 24 supporting documentation must be submitted to the Settlement Administrator,
 postmarked not later than the last day of the Claim Period.

1 7.5 The Settlement Administrator may deny any claim for a
 2 Reimbursement Payment which it deems to be fraudulent. Any such denial must be
 3 approved (approval not to be unreasonably withheld) by counsel for Plaintiffs and
 4 Defendants to be effective. Any such denials of claims deemed by the Settlement
 5 Administrator to be fraudulent which are not approved by counsel for both Plaintiffs
 6 and Defendants shall be submitted to the Court for resolution pursuant to the law of
 7 the state of New Jersey within twenty (20) days after counsel are advised of the
 8 Settlement Administrator's decision.

9 7.6 All Reimbursement Payment claims and Proofs of Repair (including
 10 claimants' sworn statements) shall be subject to audit by Defendants where good
 11 cause exists to do so, on reasonable notice to Class Counsel, including, but not
 12 limited to, Defendants' right to require any person to bring his, her or its Settlement
 13 Class Vehicle to an Authorized Volkswagen Dealer or Authorized Audi Dealer for
 14 inspection at Defendants' sole expense, if practicable, prior to approving any claim.

15 **8. REVERSION OF UNCLAIMED REIMBURSEMENT FUND.**

16 In the event that approval of the Settlement is denied, reversed or modified on
 17 appeal, the entire amount remaining in the Reimbursement Fund, including interest
 18 accrued, shall be refunded to the order of Defendant Volkswagen Group of America,
 19 Inc.

20 **9. EFFECT ON EXISTING WARRANTIES OR CUSTOMER SATISFACTION**
 21 **PROGRAMS**

22 Except as expressly provided in this Settlement Agreement, nothing in this
 23 Settlement Agreement will be construed as adding to, diminishing or otherwise
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1 affecting any express or implied warranty, duty or contractual obligation of
2 Defendants in connection with the Settlement Class Vehicles. Any benefits available
3 to a Settlement Class Member under this Settlement Agreement will not be
4 conditioned upon, limited or reduced by participation in, or availability of, any
5 customer satisfaction or goodwill policies, service campaigns (i.e. P9, JU), programs
6 or procedures maintained by Defendants at any time. Defendants may continue to
7 effect or implement any customer satisfaction or goodwill policy, program or
8 procedure, during the pendency of the Settlement approval proceedings, and, in
9 their discretion may extend goodwill consideration to individual Settlement Class
10 Members, without regard to such Persons' entitlement to such relief under the terms
11 of this Settlement Agreement.

12 **10. RELEASES**

13 Upon the Effective Date, the Representative Plaintiffs and Settlement Class
14 Members, and each of them, forever release, discharge and covenant not to sue the
15 Released Persons regarding any of the Released Claims, which shall be understood
16 to include all such claims which they do not know of or suspect to exist in their favor
17 at the time of this release and which, if known by them, might have affected their
18 settlement and release of the Released Persons, or might have affected their
19 decision not to object to this Settlement Agreement. With respect to all Released
20 Claims, the Settling Parties stipulate and agree that the Representative Plaintiffs and
21 the Settlement Class Members shall expressly waive and relinquish the Released
22 Claims to the fullest extent permitted by law. The releases set forth in this
23 Settlement Agreement shall apply even if the Representative Plaintiffs and/or the
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1 Settlement Class Members subsequently discover facts in addition to or different
 2 from those which they now know or believe to be true. Upon the Effective Date, the
 3 Representative Plaintiffs and the Settlement Class Members fully, finally and forever
 4 settle and release any and all of the claims, demands, rights and liabilities of every
 5 nature and description defined as "Released Claims," whether known or unknown,
 6 suspected or unsuspected, matured or unmatured, contingent or non-contingent,
 7 concealed or hidden from existence, asserted or unasserted, or based upon any
 8 theory of law or equity now existing or coming into existence in the future, including,
 9 but not limited to, conduct which is negligent, fraudulent, intentional, with or without
 10 malice or a breach of any duty, law or rule, without regard to the subsequent
 11 discovery or existence of different or additional facts. The Settling Parties
 12 acknowledge that the foregoing waiver was bargained for and is a material element
 13 of this Settlement Agreement.

14 **11. NOTICE PLAN-NOTICE TO THE SETTLEMENT CLASS**

15 **11.1** The Settlement Administrator shall be responsible for implementing the
 16 Notice Plan. Moreover, as a condition of its retention, the Settlement Administrator
 17 must agree that (a) it will fulfill all responsibilities and duties assigned to the
 18 Settlement Administrator under the terms of this Settlement Agreement, and (b) the
 19 Representative Plaintiffs, Class Counsel, Defendants and the Released Parties
 20 reserve all claims and rights, if any, for any failure by the Settlement Administrator to
 21 fulfill its responsibilities and duties under the terms of this Settlement Agreement.

22 **11.2** Dissemination of Notice to the Settlement Class shall be accomplished
 23 pursuant to the Notice Plan. The Settlement Administrator, along with Class
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1 Counsel and Defendants, shall be responsible for arranging for the mailing and
2 publication of Notice pursuant to this Settlement Agreement and/or responding to
3 requests for or regarding the Notice and administration of claims as set forth in this
4 Article 11.

5 11.3 The Settlement Administrator (and any third party retained by the
6 Settlement Administrator) shall sign a confidentiality agreement which shall provide
7 that the names, addresses and other information about specific Settlement Class
8 Members provided by either Defendants, Class Counsel or by individual Settlement
9 Class Members shall all be treated as confidential and shall be used by the
10 Settlement Administrator only as required by this Settlement Agreement. The form
11 and content of such confidentiality agreement shall be mutually agreed to by Class
12 Counsel and Defendants.

13 11.4 The Settlement Administrator will be provided name and/or mail
14 address data obtained by Defendants, Class Counsel, and R.L. Polk & Co., of all
15 known present and former owners and lessees of a Settlement Class Vehicle, which
16 name and address data shall be processed by the Settlement Administrator through
17 the National Change of Address database for the purpose of updating the
18 addresses.

19 11.5 Prior to direct mail of the Notice, the Settlement Administrator shall
20 provide to Defendants' counsel and to Class Counsel a certification confirming the
21 method by which the Settlement Class Member mailing list was compiled and the
22 accuracy of the information therein, and the mailing list may be supplemented by
23 Class Counsel prior to the mailing.
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1 11.6 The Settlement Administrator or Persons under the control and
2 supervision of the Settlement Administrator shall mail Notice substantially in the
3 same form as the mailed Notice attached to this Settlement Agreement as Exhibits
4 A.1 - A.5 by first-class postage prepaid United States mail, to all original and
5 subsequent owners and lessees of Settlement Class Vehicles for whom mail
6 address data is provided. Together with the mailed Notice, the Settlement
7 Administrator shall mail the Claim Form by first-class postage prepaid United States
8 mail to all original and subsequent owners and lessees of Settlement Class Vehicles
9 for whom mail address data is provided as set forth in Section 11.4.

10 11.7 The Settlement Administrator shall also provide a copy of the Notice
11 and/or Claim Form to any Settlement Class Member who requests the Notice and/or
12 Claim Form, promptly upon such request.

13 11.8 The Settlement Administrator shall establish and maintain a website,
14 which shall make available: (a) an electronic version of the Mailed Notice (Exhibits
15 A.1 - A.5, as applicable,); and (b) upon entry of a Vehicle Identification Number
16 validly identifying a Settlement Class Vehicle and the requesting party's name, an
17 electronic copy of the Claim Form (as included in Exhibits A.1, A.2 and A.3) that a
18 Settlement Class Member may print out and submit to the Settlement Administrator.
19 Copies of this Settlement Agreement and other pertinent settlement documents and
20 information as shall be agreed by Counsel shall also be posted and/or available for
21 download on such website.

22 11.9 The Settlement Administrator shall provide declarations to the Court,
23 with a copy to Class Counsel and Defendants, attesting to the measures undertaken
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1 to provide Notice and Claim Forms to the Settlement Class. The Settlement
 2 Administrator, upon request, shall provide to Class Counsel and Defendants'
 3 Counsel information and data concerning the claims made, the amount of each
 4 claim and related claims information, such that Class Counsel and Defendants'
 5 Counsel may inspect and monitor the claims process.

6 11.10 Defendants shall pay all Notice and Claims Administration Expenses,
 7 subject to the terms of this Settlement Agreement.

8 **12. CLAIMS ADMINISTRATION AND PROCEDURE**

9 12.1 Settlement Class Members who believe they are eligible to receive
 10 monetary reimbursement will be directed to send to the Settlement Administrator the
 11 Claim Form substantially in the form included in Exhibit A.1, A.2 and A.3, and
 12 required documentation. Upon receiving a Claim Form from a potential claimant, the
 13 Settlement Administrator will review the documentation and confirm or deny the
 14 Settlement Class Member's eligibility for a Reimbursement Payment within the
 15 deadlines set forth in this Settlement Agreement.

16 12.2 All Claim Forms must be postmarked within the Claim Period. Any
 17 Settlement Class Member who fails to submit a Claim Form postmarked by such
 18 date shall be forever barred from receiving any payment pursuant to this Settlement
 19 Agreement and the Judgment, but shall in all other respects be bound by the terms
 20 of this Settlement Agreement.

21 12.3 The Settlement Administrator shall determine the extent, if any, to
 22 which each claim shall be accepted and allowed, in accordance with the terms of this
 23 Settlement Agreement, subject to Article 7.5.
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1 12.4 Claim Forms that do not meet the requirements set forth in this
 2 Agreement and in the Claim Form instructions shall be rejected. This shall include,
 3 but is not limited to, failure to accurately provide Proof of Repair or any other
 4 requested information. Within thirty (30) days after the Effective Date, the
 5 Settlement Administrator shall notify in writing any claimant whose Claim Form has
 6 been rejected, in whole or in part, setting forth the reasons for the rejection, as well
 7 as providing notice of the claimant's right to contest the rejection as set forth in
 8 Section 12.5.

9 12.5 If any claimant whose Claim Form has been rejected, in whole or in
 10 part, desires to contest such rejection, the claimant must mail to the Settlement
 11 Administrator a notice and statement of reasons indicating the claimant's grounds for
 12 contesting the rejection, along with any supporting documentation, and requesting
 13 further review by the Settlement Administrator, in consultation with Defendants'
 14 Counsel and Class Counsel, of the denial of the claim. Any such mailing contesting
 15 the rejection of a Claim Form must be postmarked within thirty (30) days after the
 16 date of mailing of the notice of the rejection as provided in Section 12.4. Claims
 17 submitted after this time shall be forever barred from receiving any payment
 18 pursuant to this Settlement Agreement and the Judgment.

19 12.6 Defendants shall have the obligation to attempt to pay valid claims
 20 once, by requesting the Settlement Administrator to place a check in the first-class
 21 United States mail to the allowed claimant at the address shown on the relevant
 22 Claim Form. If a check issued to a Settlement Class Member under the terms of this
 23 Settlement Agreement is not cashed or negotiated within one hundred twenty (120)

1 days after mailing, it shall be null and void and there shall be no further obligation to
2 make payment to such Settlement Class Member,

3 12.7 No monetary reimbursement or other consideration shall be paid to
4 Settlement Class Members from the Reimbursement Fund pursuant to this
5 Settlement Agreement until after: (a) the expiration of the deadline for filing Claim
6 Forms, Objections pursuant to Article 13 and/or requests pursuant to Article 13 for
7 exclusion from the Settlement; (b) a final determination as to the approval or
8 disapproval of all claims for a Reimbursement Payment received by the Settlement
9 Administrator (including purported fraudulent claims in accordance with Article 7.5
10 and partial rejections in accordance with Article 12.3; and (c) the Effective Date have
11 all occurred. If any claim for a Reimbursement Payment is denied in whole or in
12 part, or if otherwise qualifying reimbursement amounts are adjusted *pro rata* based
13 on the ratio of valid claims to the total available Reimbursement Fund, the
14 Settlement Administrator shall send a notice in writing of the reasons for the denial
15 or adjustment to the claimant.

16 12.8 If this Settlement is not approved, or for any reason the Effective Date
17 does not occur, no monetary reimbursement payments or distributions of any kind
18 shall be made pursuant to this Settlement Agreement, except for the cost of Notice
19 and administration incurred if already provided to Settlement Class Members. In
20 such event, any funds deposited by Defendants into any account opened for the
21 purpose of this Settlement Agreement shall revert to Defendants, together with all
22 interest on the deposited funds.

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1 **13. OBJECTIONS AND REQUESTS FOR EXCLUSION**

2 **13.1** Any Settlement Class Member who intends to object to the fairness,
 3 reasonableness and adequacy of any aspect of the Settlement ("Objections") must
 4 send a written Objection to the Court and mail a copy to the Settlement
 5 Administrator, Defense Counsel and Class Counsel, first-class United States mail
 6 with postage paid. Objections must be postmarked not later than thirty (30) days
 7 after the date of the mailing of Notice. In his, her or its Objection, an objecting
 8 Settlement Class Member must: (a) set forth his, her or its full name, current address
 9 and telephone number; (b) identify the approximate date of acquisition and Vehicle
 10 Identification Number for his, her or its Settlement Class Vehicle; (c) state that the
 11 objector has reviewed the Settlement Class definition and understands that he, she
 12 or it is a Settlement Class Member; (d) set forth a complete statement of all legal and
 13 factual bases for any Objection that the objector wishes to assert; and (e) provide
 14 copies of any documents that the objector wishes to submit relating to his, her or its
 15 position. Objections must be filed with the Court, and served upon the Settlement
 16 Administrator and:

17 Upon Defendants' Counsel at:

18 Chase Kurshan Herzfeld & Rubin, LLC
 19 354 Eisenhower Parkway
 Livingston, New Jersey 07039

20 And upon Class Counsel at:

21 Mazie Slater Katz & Freeman, LLC
 22 103 Eisenhower Parkway
 Roseland, New Jersey 07068

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1 Schoengold & Sporn, P.C.
2 19 Fulton Street, Suite 406
3 New York, NY 10038

4 13.2 In addition to the requirements set forth in Section 13.1, objecting
5 Settlement Class Members must state in writing whether the objector intends to
6 appear at the Fairness Hearing(s) either with or without separate counsel. No
7 Settlement Class Member shall be entitled to be heard at the Fairness Hearing
8 (whether individually or through separate counsel) or to object to the Settlement, and
9 no written objections or briefs submitted by any Settlement Class Member shall be
10 received or considered by the Court at the Fairness Hearing, unless written notice of
11 the Settlement Class Member's intention to appear at the Fairness Hearing and
12 copies of any written objections or briefs shall have been sent to the Court and
13 served on counsel for the Settling Parties at the addresses set forth in Section 13.1
14 on or before the date specified in the Preliminary Approval Order and Notice.
15 Settlement Class Members who fail to file with the Court and serve on counsel timely
16 written Objections in the manner specified above shall be deemed to have waived
17 any objections and shall be foreclosed from making any objection (whether by
18 appeal or otherwise) to the Settlement.

19 13.3 Settlement Class Members may elect to exclude themselves from the
20 Settlement, relinquishing their rights to benefits under this Settlement Agreement.
21 Settlement Class Members who exclude themselves from the Settlement will not
22 release their claims. A Settlement Class Member wishing to be excluded from the
23 Settlement must send to the Settlement Administrator a letter postmarked not later
24 than thirty (30) days after the date of the mailing of Notice, including: (a) name,

1 current address, and telephone number; (b) the approximate date of acquisition and
 2 Vehicle Identification Number of that Settlement Class Member's Settlement Class
 3 Vehicle, if available; and (c) a clear statement communicating that he, she or it elects
 4 to be excluded from the Settlement Class, does not wish to be a Settlement Class
 5 Member and elects to be excluded from any judgment entered pursuant to the
 6 Settlement. Any request for exclusion must be postmarked on or before the
 7 exclusion deadline provided in the Notice. Settlement Class Members who fail to
 8 submit a valid and timely request for exclusion on or before the date specified in the
 9 Preliminary Approval Order and Notice, or on such other date as may be set by the
 10 Court, shall be bound by all terms of the Settlement and the Judgment, regardless of
 11 whether they have requested exclusion from the Settlement.

12 **13.4** Any Settlement Class Member who submits a request for exclusion
 13 with a timely postmark may not file an Objection to the Settlement and shall be
 14 deemed to have waived any rights or benefits under this Settlement Agreement.

15 **13.5** The Settling Parties agree that they will not solicit, facilitate or assist in
 16 any way, requests for exclusions or Objections by putative or actual Settlement
 17 Class Members. Class Counsel and Defendants' Counsel recognize that they have
 18 an obligation to support the Settlement and to seek the Court's approval of its terms.
 19 Class Counsel will abide by all applicable and governing ethical rules, opinions and
 20 obligations precluding their representation of opt outs.

21 **13.6** Not later than fifteen (15) business days after the deadline for
 22 submission of requests for exclusion, the Settlement Administrator shall provide to
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1 Class Counsel and Defendant's Counsel a complete exclusion list together with
 2 copies of the exclusion requests (the "Opt-Out List").

3 13.7 Upon expiration of the deadline for filing Claim Forms, Objections
 4 and/or requests for exclusion from the Settlement as approved by the Court and set
 5 forth in the Notice, or such other date as may be set by the Court, the Fairness
 6 Hearing shall be conducted to determine final approval of the Settlement along with
 7 the amount properly payable for Class Counsel Fees and Expenses. Upon final
 8 approval of the Settlement by the Court at or after the Fairness Hearing, the Settling
 9 Parties shall present a form of Final Judgment and Order approving the Settlement,
 10 unless otherwise ordered by the Court.

11 13.8 If more than five (5%) percent of persons to whom Notice is mailed
 12 timely submit a valid request for exclusion from the Settlement Class, Defendants
 13 may, at their option, withdraw from this Settlement Agreement. In that event, the
 14 certification of the Settlement Class shall be vacated without prejudice, and the
 15 Parties shall be restored to their litigation position existing immediately before the
 16 execution of this Settlement Agreement. In order to elect to withdraw from this
 17 Settlement Agreement, the withdrawing Defendants must notify all Parties' Counsel
 18 in writing of their election to do so within ten (10) business days after the Opt-Out
 19 List has been served on the Settling Parties.

20 **14. FAIRNESS HEARING**

21 14.1 Promptly after execution of this Settlement Agreement, Class Counsel
 22 will submit this Settlement Agreement together with its Exhibits to the Court and will
 23 request that the Court issue an Order which shall preliminarily approve the

1 Settlement and order that Notice be disseminated to the Settlement Class, in the
 2 form annexed hereto as Exhibits A.1-A.5 (Mailed Notice) and B (Published Notice),
 3 which mailed notice shall disclose the existence and nature of the Litigation and the
 4 proposed Settlement, shall inform Settlement Class Members of the procedures and
 5 deadlines for filing claims for Reimbursement Payments, objections, expressions of
 6 intent to appear at the Fairness Hearing and/or requests for exclusion as set forth
 7 therein, and the effect of the Settlement, and shall schedule a Fairness Hearing on
 8 whether the Settlement should be granted final approval and to determine the Fee
 9 Application.

10 **15. CLASS COUNSEL FEES AND EXPENSES**

11 **15.1** The Settling Parties agree that Class Counsel will submit an application
 12 to the Court for an award of reasonable attorneys' fees and expenses on or before
 13 forty-five (45) days prior to the date of the Fairness Hearing ("Fee Application").
 14 Each Settling Party reserves all rights to appeal from a Class Counsel Fees and
 15 Expenses Award if that Party files a timely and proper objection with the Court. The
 16 Class Counsel Fees and Expenses Award and final approval order shall be separate
 17 so that the appeal of one shall not constitute an appeal from the other.

18 **15.2** Class Counsel Fees and Expenses shall be paid entirely and
 19 exclusively by Defendants and shall not diminish, invade or reduce, or be derived or
 20 drawn from, the Reimbursement Fund.

21 **15.3** Any Class Counsel Fees and Expenses awarded shall be paid by
 22 Defendants to Class Counsel within thirty (30) days of entry of the Judgment
 23 granting final approval of the Settlement. In the event of an appeal of the award of

1 the Class Counsel Fees and Expense Award, the attorneys' fees and costs are to be
 2 held in an interest bearing account. Within fifteen (15) days after the final resolution
 3 of appellate proceedings and related Court proceedings with regard to the Counsel
 4 Fees and Expense Award, the amount finally awarded by the Court shall be paid to
 5 Class Counsel, together with all accrued interest on the said amount.

6 **16. CONDITIONS FOR EFFECTIVE DATE; EFFECT OF TERMINATION**

7 If the Court does not approve this Settlement Agreement or the Settlement is
 8 terminated or fails to become effective in accordance with the terms of this
 9 Settlement Agreement, the Settling Parties and the Settlement Class Members will
 10 be restored to their respective positions in the Litigation as of the date of this
 11 Settlement Agreement. In such event, the terms and provisions of this Settlement
 12 Agreement will have no further force or effect and will not be used in this Litigation or
 13 in any other proceeding for any purpose, and any judgment or order entered by the
 14 Court in accordance with the terms of this Settlement Agreement will be treated as
 15 vacated, nunc pro tunc. No order of the Court or of any appellate court concerning
 16 any award of attorneys' fees, expenses or costs to Class Counsel will constitute
 17 grounds for cancellation or termination of this Settlement Agreement.

18 **17. BEST EFFORTS**

19 The Settling Parties and their counsel agree to cooperate fully with one another and
 20 to use their best efforts to effectuate the Settlement, including, but not limited to,
 21 exchange of discovery necessary to value and effectuate the settlement, in seeking
 22 preliminary and final Court approval of this Settlement Agreement and the
 23 Settlement embodied herein, carrying out the terms of this Settlement Agreement

1 and promptly agreeing upon and executing all such other documentation as may be
2 reasonably required to obtain final approval by the Court of the Settlement and to
3 carry out the terms of the Settlement.

4 **18. MISCELLANEOUS PROVISIONS**

5 **18.1** The Settling Parties intend the Settlement to be a final and complete
6 resolution of all disputes between them with respect to the Litigation. The
7 Settlement compromises all contested claims as well as any claims that might be
8 asserted in the Litigation and will not be deemed an admission by any Settling Party
9 as to the merits of any claim or defense which has been, is or could have been
10 asserted by that Settling Party in the Litigation.

11 **18.2** The Settling Parties agree that the consideration provided to the
12 Settlement Class and the other terms of the Settlement were negotiated at arm's
13 length and in good faith by the Settling Parties, and reflect a settlement that was
14 reached voluntarily after consultation with competent legal counsel.

15 **18.3** Neither this Settlement Agreement nor the Settlement, nor any act
16 performed or document executed pursuant to or in furtherance of this Settlement
17 Agreement or the Settlement is or may be deemed to be or may be used as an
18 admission of, or evidence of, the validity of any of the Released Claims, or of any
19 wrongdoing or liability of any Released Persons; or is or may be deemed to be or
20 may be used as an admission of, or evidence of, any fault or omission of any
21 Released Person in any civil, criminal, or administrative proceeding in any court,
22 administrative agency or other tribunal. Any Released Person may file this
23 Settlement Agreement and/or the Judgment in any action that may be brought

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1 against it in order to support any defense or counterclaim, including, without
2 limitation, those based on principles of res judicata, collateral estoppel, release,
3 good faith settlement, judgment bar or reduction, or any other theory of claim
4 preclusion or issue preclusion or similar defense or counterclaim.

5 18.4 All agreements made and orders entered during the course of the
6 Litigation relating to the confidentiality of information will survive this Settlement
7 Agreement.

8 18.5 Any and all Exhibits to this Settlement Agreement are material and
9 integral parts hereof and are fully incorporated herein by this reference.

10 18.6 This Settlement Agreement may be amended or modified only by a
11 written instrument signed by or on behalf of all Settling Parties or their respective
12 successors in interest.

13 18.7 This Settlement Agreement and the Exhibits attached hereto constitute
14 the entire agreement among the Settling Parties, and no representations, warranties
15 or inducements have been made to any Party concerning this Settlement Agreement
16 or its Exhibits other than the representations, warranties and covenants covered and
17 memorialized in such documents.

18 18.8 Plaintiffs' Counsel, on behalf of the Settlement Class, represent and
19 warrant that they are expressly authorized by the Representative Plaintiffs to take all
20 appropriate action required or permitted to be taken by the Settlement Class
21 pursuant to this Settlement Agreement to effectuate its terms, and are expressly
22 authorized to enter into this Settlement Agreement, as well as any modifications or
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1 amendments to this Settlement Agreement on behalf of the Settlement Class that
2 Class Counsel deem appropriate.

3 18.9 Each Person executing this Settlement Agreement or any of its Exhibits
4 on behalf of any Party hereby warrants that such Person has the full authority to do
5 so.

6 18.10 This Settlement Agreement may be executed in one or more
7 counterparts. All executed counterparts and each of them will be deemed to be one
8 and the same instrument. A complete set of original counterparts will be filed with
9 the Court.

10 18.11 This Settlement Agreement will be binding upon, and inure to the
11 benefit of, the successors and assigns of the Settling Parties.

12 18.12 The Court shall retain continuing and exclusive jurisdiction over the
13 Settling Parties and all Settlement Class Members, and over the administration and
14 enforcement of the Settlement. Any disputes or controversies arising with respect to
15 the interpretation, enforcement, or implementation of this Settlement Agreement
16 must be made by motion to the Court.

17 18.13 Except as otherwise provided in this Settlement Agreement, the
18 Settling Parties will bear their own respective costs. Defendants shall in no way be
19 liable for any taxes Class Counsel, the Representative Plaintiffs, Settlement Class
20 Members or others may be required to pay as a result of the receipt of settlement
21 benefits or payments from the Reimbursement Fund.

22 18.14 No Settlement Class Member or other Person shall have any claim
23 against the Representative Plaintiffs, Class Counsel, the Released Persons, the
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1 Settlement Administrator or any agent designated by Counsel for the Settlement
2 Class based on the negotiation of the terms of this Settlement Agreement, any
3 eligibility determinations, distributions or payments made in accordance with the
4 Settlement, or based on the payments made or other relief provided and made
5 substantially in accordance with this Settlement Agreement or with further orders of
6 the Court or any appellate court.

7 18.15 The Settling Parties hereby agree and stipulate to stay all proceedings
8 in the Litigation until the approval of this Settlement Agreement has been finally
9 determined, except the stay of proceedings shall not prevent the filing of any
10 motions, declarations and other writings or the conduct of other proceedings
11 necessary to the approval or performance of this Settlement Agreement.

12 18.16 None of the Settling Parties, or their respective Counsel, will be
13 deemed the drafter of this Settlement Agreement or its Exhibits for purposes of
14 construing the provisions thereof. The language in all parts of this Settlement
15 Agreement and its Exhibits will be interpreted according to its fair meaning, and will
16 not be interpreted for or against any of the Settling Parties as the drafter thereof.

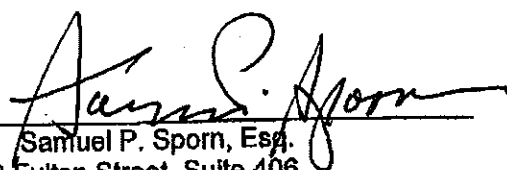
17 18.17 This Settlement Agreement and the Exhibits annexed hereto will be
18 construed and enforced in accordance with, and governed by, the substantive laws
19 of the State of New Jersey, without giving effect to that state's choice-of-law
20 principles.

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IN WITNESS WHEREOF, the Settling Parties have executed and caused this Settlement Agreement to be executed by their duly authorized attorneys, dated as of January 22, 2010.


For Dewey Plaintiffs.

SCHOENGOLD & SPORN, P.C.


Samuel P. Sporn, Esq.
19 Fulton Street, Suite 406
New York, New York 10038
(212) 964-0046

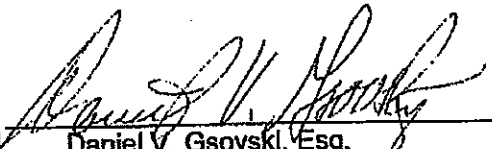
For Delguercio plaintiffs:

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For All Defendants:

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(212) 471-8500

gcl

1 CHASE KURSHAN HERZFELD & RUBIN, LLC

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By:

Jeffrey L. Chase
by [signature]

Jeffrey L. Chase, Esq.

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Livingston, New Jersey 07039-1022

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